

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

TRUSTEES OF THE DETROIT
CARPENTERS FRINGE BENEFIT FUNDS,

Plaintiffs,

Case No.
Hon.

v

BRINKER TEAM CONSTRUCTION CO., a Michigan
corporation and LARRY S. BRINKER, an individual,
jointly and severally,

Defendants.

WALTER B. FISHER JR. (P51337)
FILDEW HINKS, PLLC
Attorneys for Plaintiffs
26622 Woodward Avenue
Suite 225
Royal Oak, MI 48067
(248) 837-1397
wfisher@fildewhinks.com

COMPLAINT

Plaintiffs, by their attorneys, Fildew Hinks, PLLC, state:

1. The Detroit Carpenters Fringe Benefit Funds, a voluntary association, consists of representatives and agents of the Detroit Carpenters Health and Welfare Fund, the Michigan Regional Council of Carpenters Employee Benefits Fund, the

Carpenters Pension Trust Fund - Detroit and Vicinity, the Carpenters Annuity Fund, the Michigan Regional Council of Carpenters Annuity Fund, the Detroit Carpenters Joint Apprenticeship and Training Trust Fund, the Guarantee Fund and the Industry Advancement Fund (if applicable), each of which is a trust fund established pursuant to the Labor-Management Relations Act of 1947 ("LMRA"), as amended, 29 U.S.C., Section 141 et seq., and the Employee Retirement Income Security Act of 1974 ("ERISA"), as amended, 29 U.S.C., Section 1001 et seq., having its principal office in this District and Division. Plaintiffs are trustees of the funds named, on whose behalf, and on behalf of whose beneficiaries, this action is filed, as their respective interests shall appear.

2. Defendant Brinker Team Construction Co., is a Michigan corporation doing business in this district and division.

3. Larry S. Brinker is an individual doing business in this district and division.

4. Larry S. Brinker was an owner, officer, and/or individual otherwise involved with a Michigan corporation known as Brinker Team Construction Co., a business which engaged in the commercial construction industry. In such capacity, and upon information and belief, Larry S. Brinker was involved in, and took part in, the day-to-day affairs and operations of, and maintained control of Brinker Team Construction Co.

5. Jurisdiction of this Court is predicated on Section 301 of the LMRA, 29 U.S.C., Section 185, and Section 502 of ERISA, 29 U.S.C., Section 1132, this being a suit for violation of a contract between an employer (Defendant) and the Michigan Regional Council of Carpenters, AFL-CIO, the successor to the Carpenters District Council of Detroit, (the "Union"), a labor organization representing employees in an industry affecting commerce.

Count I ERISA Claim

6. Plaintiffs incorporate each and every allegation contained in the preceding paragraphs as though fully set forth herein.

7. Brinker Team Construction Co., either directly or through its authorized agents, has entered into one or more collective bargaining agreements with the Union, copies of which are in the possession of the Defendant and are not attached hereto due to their bulk, but which will be supplied upon request.

8. Pursuant to the collective bargaining agreements Brinker Team Construction Co. became obligated to pay wages and to make periodic payments to the Funds represented by Plaintiffs, which payments constituted employee benefits earned by employees of Brinker Team Construction Co. who were either members, or fell within the jurisdiction, of the Union and were covered by the collective bargaining agreements.

9. Plaintiffs became aware that Brinker Team Construction Co. was not making required fringe benefit contributions in violation of ERISA and its collective bargaining agreement with the Union on January 22, 2014.

10. Pursuant to the collective bargaining agreements alleged above, Defendant submitted for audit its books and records to verify the accuracy of the contributions made to Plaintiffs pursuant to the agreements as well as to determine the amount of any deficiency for the period January 1, 2008 through April 31, 2013.

11. On January 22, 2014, Plaintiffs determined a deficiency for fringe benefits, in the amount of \$172,689.72 for the period January 1, 2008 through April 31, 2013, less payment of \$27,607.66 received on May 15, 2012, for outstanding benefits for March 1, 2011, through May 31, 2011, for a total outstanding, fringe benefit balance of \$145,082.06. See attached Exhibit A.

12. Plaintiffs determined outstanding liquidated damages and interest owing as of January 22, 2014 totaling \$211,324.95.

13. There is now due and owing to Plaintiffs from Defendant the sum of \$356,407.01.

14. Plaintiffs sent the audit letter attached as Exhibit A to the Defendants on January 22, 2014.

15. Despite demands by Plaintiffs, Defendant has failed, neglected and refused to pay that amount or any portion thereof.

WHEREFORE, Plaintiffs pray:

A. That this Court enter judgment against Brinker Team Construction Co. for \$356,407.01, plus actual costs, double interest and actual attorney fees.

B. That this Court grant Plaintiffs any other relief that it deems appropriate.

Count II Michigan Builders Trust Fund Claim

16. Plaintiffs incorporate each and every allegation contained in the preceding paragraphs as though fully set forth herein.

17. During the period January 1, 2008 through April 17, 2013, Defendant engaged in the business of commercial construction contracting, among other facets of the construction industry, and as such conducted business in the building construction industry within the meaning of the Michigan Building Contract Fund Act, Mich. Comp. Laws Ann. §570.151 et seq. (hereinafter the “Trust Fund Act”).

18. Larry S. Brinker, in connection with the operation of Brinker Team Construction Co., received payment from customers for all, or part, of the labor which remains the subject of the fringe benefit contributions which remain unpaid to Plaintiffs.

19. Pursuant to the Trust Fund Act, any such payments received by Brinker Team Construction Co. and/or Larry S. Brinker were deemed to be held in trust by them, as trustees for the benefit of, among others, the individual employees who furnished labor to, and or on behalf of, Brinker Team Construction Co..

20. The funds that were held in trust by Brinker Team Construction Co. and Larry S. Brinker, in their capacities under the Trust Fund Act, included the contributions Brinker Team Construction Co. was required to make to the Plaintiffs for the period January 1, 2008 through April 31, 2013.

21. In violation of the Trust Fund Act, Brinker Team Construction Co. and Larry S. Brinker retained, used or appropriated said payments received for purposes other than to pay the fringe benefit contributions accrued for the benefit of the individual carpenters employed by Brinker Team Construction Co..

22. Brinker Team Construction Co. and Larry S. Brinker appropriated monies paid to Brinker Team Construction Co. for their own business operations and/or for their own personal use before payment of all monies due, or to become due to Plaintiffs, in violation of Mich. Comp. Laws Ann. 570.151, et seq.

WHEREFORE, Plaintiffs request this court order an accounting in connection with payments received by Brinker Team Construction Co. for work performed during the

period January 1, 2008, through April 31, 2013; declare Brinker Team Construction Co. and Larry S. Brinker to be Trustees with respect to funds received during that period; to trace the proceeds of the subject trust funds, and to enter judgment against Brinker Team Construction Co. and Larry S. Brinker jointly and severally in the amount of \$356,407.01, plus actual costs, interest and actual attorney fees.

Count III

Violation of Employee Retirement Income Security Act (ERISA)
29 U.S.C. § 1001 et. Sec.

23. Plaintiffs incorporate each and every allegation contained in the preceding paragraphs as though fully set forth herein.

24. Individuals providing labor and employed by, or on behalf of, Brinker Team Construction Co., Inc., pursuant to the subject collective bargaining agreement earned outstanding fringe benefit contributions in connection with and in furtherance of their employment. See audit attached as Exhibit A.

25. These accrued fringe benefit contributions were properly payable to the employee benefit plans administered by Plaintiffs when due.

26. The accrued fringe benefit contributions and funds otherwise in the Defendants' possession, custody and/or control which were otherwise available to pay the accrued fringe benefit contributions were to be held in trust by the defendants in

their capacity as a fiduciary, as required by ERISA pursuant to 29 U.S.C. § 1145, until the defendants paid to Plaintiffs said fringe benefit contributions in accordance with the terms and conditions of their collective bargaining agreement and related trust agreements. Such accrued fringe benefit contributions became assets of the respective employee benefit plans administered by Plaintiffs upon accrual.

27. The Defendants failed to turn over these plans assets by failing to pay all of the accrued outstanding fringe benefit contributions to Plaintiffs when due. Rather, upon information and belief, the Defendants utilized the accrued outstanding fringe benefit contributions and funds otherwise within their possession, custody, and/or control for purposes other than payment to Plaintiffs.

28. In failing to turn over such plan assets to Plaintiffs, the Defendants violated 29 U.S.C. § 1145, 1104, and 1109 (a) and their obligations under the collective bargaining agreement and related Trust Agreements incorporated therein.

29. The Defendants' failure to turn over plan assets, failure to make fringe benefit contributions to Plaintiffs, failure to account for those contributions, and misuse of funds otherwise properly payable to Plaintiffs constitute a breach of their fiduciary duties regarding the Funds within the meaning of 29 U.S.C. § 1104(a)(1)(A) and are violations of 29 U.S.C. § 1145, 1104 and 1109 (a).

30. Individual Larry S. Brinker is personally liable to the Funds for breaching his fiduciary duties pursuant to 29 U.S.C. § 1104(a).

WHEREFORE, Plaintiffs pray:

A. That this Court enter judgment against Defendant Larry S. Brinker for all unpaid fringe benefit contributions owed by Brinker Team Construction Co., Inc., pursuant to the Funds audit of Brinker Team Construction Co., Inc., for the period January 1, 2008, through April 31, 2013 in the amount of \$356,407.01 plus actual costs, interest and actual attorney fees.

B. That this Court grant Plaintiffs any other relief that it deems appropriate.

Dated: October 15, 2014

FILDEW HINKS, PLLC

By: /s/Walter B. Fisher Jr.
Attorneys for Plaintiffs
26622 Woodward Avenue
Suite 225
Royal Oak, MI 48067
(248) 837-1397
wfisher@fildewhinks.com
P51337

EXHIBIT A

STEFANSKY, HOLLOWAY & NICHOLS, INC.
PAYROLL AUDITING SERVICES

22260 HAGGERTY ROAD, SUITE 350
 NORTHVILLE, MICHIGAN 48167

(248) 305-9905
 FAX: (248) 305-9901

January 22, 2014

Brinker Team Construction Company
 815 West Grand Boulevard
 Detroit, MI 48216

Dear Sir/Madam:

This is to inform you of the results of the recent audit to confirm your contributions to the Michigan Regional Council of Carpenters Fringe Benefit Funds. Based on the records provided, our examination has revealed that the following amounts are still owing the aforementioned Funds.

<u>Fund</u>	<u>Audit Time Period</u>	<u>1/08 - 04/13</u>
		<u>Amt. Owed</u>
M.R.C.C.E.B.F.		\$46,489.85
Vacation		\$0.00
Pension		\$96,081.55
Annuity		\$19,795.57
Apprentice		\$786.47
L.M.P.T.		\$349.90
Appr. Reimb.		\$583.82
Working Dues		\$5,517.10
Ind. Adv.		\$527.13
Special Asmnt		\$1,442.42
Guaranty Fund		\$0.00
U.B.C. Adv.		<u>\$1,115.91</u>
Sub Total		\$172,689.72
LESS PAYMENT RECEIVED: 5/15/12		(\$27,607.66)
Audit Liquidated Damages*		\$20,580.86
Interest**		\$50,284.41
Liquidated damages resulting from late payments***		<u>\$140,459.68</u>
		<u><u>\$356,407.01</u></u>

A man-by-man breakdown covering the contributions due and owing the Funds is enclosed.

If you disagree with the above findings or have any questions, please contact the undersigned at (248) 305-9905 so that we can arrange for a meeting to review these findings. If your company is in agreement, please forward a check payable to the Michigan Regional Council of Carpenters Fringe Benefit Funds to the letterhead address.

Audit liquidated damages resulting from this audit of \$20,580.86 and interest on these audit amounts of \$50,284.41 will be waived if this audit is paid within fifteen (15) days of the billing date.

If we do not hear from you within fifteen (15) days from the date of this letter, the audit results, as shown will become final and the matter will be referred to the Collection Coordinator.

Very truly yours,

Kem Whatley
 Fund Auditor

enclosure

xc: Ms. K. Vaughn
 Mr. B. Nickerson
 Mr. W. Fisher
 All Associations

*Audit liquidated damages are equal to 0.055%, per day, for each day that a delinquent amount disclosed by the audit was originally due, until it is paid, up to a maximum of 20%.

**Interest on the audit amount is applied at the rate of .049% per day for each day that a delinquent amount disclosed by the audit was originally due, until it is paid.

***Liquidated damages and interest charges represent assessments incurred on late contributions made prior to the audit, and are assessable at the foregoing rates.

[illegible]

DISCREPANCY INFORMATION FOR THE MICHIGAN REGIONAL
COUNCIL OF CARPENTERS' FRINGE BENEFIT FUNDS

[illegible]

PREPARED BY: K. W.
DATE BILLED: 01/22/14

[illegible]

Blinker Team Construction Company	PERIOD
	1/08 - 04/13

DOI: 10.1002/anie.201706891

[illegible]

DISCREPANCY INFORMATION FOR THE MICHIGAN REGIONAL
COUNCIL OF CARPENTERS' FRINGE BENEFIT FUNDS

PREPARED BY: K.W.
DATE BILLED: 01/22/14

[illegible]

DETROIT CARPENTERS'*Brinker Team Construction Company***Schedule of Liquidated Damages****Resulting From Late Payments**

Work Month	Deposit Date	Amount Owed
12/01/09	02/08/10	\$173.84
12/01/09	02/08/10	\$1,819.34
04/01/10	06/01/10	\$21.27
04/01/10	06/01/10	\$131.95
06/01/10	08/10/10	\$337.91
06/01/10	08/10/10	\$3,255.76
08/01/10	10/05/10	\$113.11
08/01/10	10/05/10	\$1,220.47
09/01/10	11/08/10	\$219.77
09/01/10	11/08/10	\$2,016.67
10/01/10	12/20/10	\$405.56
10/01/10	12/20/10	\$3,813.65
11/01/10	01/31/11	\$516.22
11/01/10	01/31/11	\$5,056.92
12/01/10	03/10/11	\$7,801.85
01/01/11	03/10/11	\$156.32
01/01/11	04/01/11	\$5,245.78
02/01/11	04/01/11	\$17.17
02/01/11	04/01/11	\$188.88
03/01/11	06/09/11	\$7,910.62
04/01/11	06/27/11	\$778.26
04/01/11	11/08/11	\$15,396.37
05/01/11	11/08/11	\$22,458.85
07/01/11	09/01/11	\$269.88
07/01/11	09/01/11	\$31.61
12/01/11	02/15/12	\$373.41
12/01/11	03/16/12	\$7,005.75
01/01/12	03/16/12	\$1,339.94
04/01/12	06/13/12	\$2,233.16
04/01/12	06/13/12	\$26.44
04/01/12	06/13/12	\$109.45
05/01/12	07/05/12	\$35.95
05/01/12	07/05/12	\$873.85
05/01/12	07/05/12	\$18.50
06/01/12	08/28/12	\$6,371.01
06/01/12	08/28/12	\$335.09
07/01/12	10/24/12	\$6,427.53
Total this page		\$104,508.11
Total from page two (if applicable)		\$35,951.57
GRAND TOTAL		\$140,459.68